THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

W.P. No.1345 of 1998

Date: 21.06.2007

Between:

V. Ravinder … Petitioner

AND

A.P. State Road Transport Corporation,
Represented by its Managing Director,
Mushirabad, Hyderabad-20 and another … Respondents

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

W.P. No.1345 of 1998

O R D E R:

This writ petition is filed for a Writ of Mandamus declaring the order of respondent No.2 in proceedings No.L1/785 (14)/97-RM:NZB dated 01.07.1997 is illegal and violative of Articles 14, 16 and 21 of the Constitution of India.

The petitioner averred in the affidavit filed in support of the writ petition that he worked as a clerk in a private bus bearing No.AAJ-4535 owned by Sri A. Ramachandra Reddy, and which was plied from Metpally to Pallykonda via Chattapur, Choutuppal and Bheemgal; that the route, on which, the said bus was plied was nationalised on 07.11.1987 and thereby the petitioner became one of the displaced employees; that as the petitioner's case was not considered for absorption in the first respondent-Corporation, he filed W.P.No.4730 of 1989 in this Court and the said writ petition was disposed of with a direction to the petitioner to approach the authorities concerned; that when the petitioner's case was not considered despite the disposal of the said writ petition, he filed another writ petition registered as W.P.No.11114 of 1990 and by an order dated 09.11.1990, this Court directed the respondent-Corporation to consider the petitioner's case within three months. The petitioner further averred that as the said direction was not complied with, he filed Contempt Case No.548 of

1991, which was disposed of with appropriate directions. The petitioner again filed another writ petition i.e, W.P.No.2058 of 1993 questioning the rejection of the petitioner's claim for absorption on the ground that he did not possess the required certificates under the certificates issued by the displaced operators. The said writ petition was disposed of whereby this Court directed the authorities concerned to consider the experience of the petitioner with reference to the letter dated 4.2.1992 of the Labour Officer, Nizamabad. Despite the petitioner filed another writ petition namely, W.P.No.3059 of 1997, which was also disposed of on 18.02.1997, whereby this Court again directed the first respondent-Corporation to consider his case. The first respondent-Corporation again passed an order of rejection on 01.07.1997 on the ground that the petitioner has worked as a clerk, but not as a conductor. It is averred by the petitioner that though another employee by name Venkataswamy, who also worked as a clerk was absorbed as conductor, the petitioner has not been given the same benefit.

In the counter-affidavit filed by the Chief Law Officer of the first respondent-Corporation, the entire previous history of the petitioner filing the writ petitions is mentioned and in paragraph 9, it is stated as under:-

> "I submit that the case of the petitioner has been examined thoroughly by the Corporation several times pursuant to the orders in W.P.No.4730/89;W.P.No.11114/90; C.C.No.548/91; W.P.No.2058/93, W.P.No.3059/97 and proceedings were issued from time to time. I submit that the petitioner has not made out any valid grounds for interference of this Hon'ble Court under Art.226 of the Constitution of India."

Heard Sri D. Praveen Kumar, learned Counsel appearing for the

petitioner and Sri V.S.K. Rama Rao, learned counsel representing the respondents.

The learned Counsel for the petitioner submitted that the action of the respondents in rejecting the petitioner's claim for absorption on the ground that he worked only as a clerk and not as a conductor is wholly arbitrary. The learned Counsel invited my attention to the earlier orders passed by this court in W.P.No.2058 of 1993 and W.P.No.3059 of 1997, wherein respondents were directed to consider the experience certificate dated 04.02.1992 issued by the Labour Officer, Nizamabad. He submitted that while on earlier occasions, the petitioner's case was rejected on the ground that the experience certificate dated 04.02.1992 produced by the petitioner was not genuine, the respondents have now come out with an altogether different plea on the ground of rejection, namely, that the petitioner has not worked as a conductor, but he only worked as a clerk. The learned Counsel referred to the circular No.PD/22/75-76 dated 23.05.75 issued by respondent No.1 wherein it is *inter alia* provided that even clerical staff, who worked with private operators are entitled for absorption on proof of their employment under the displaced operator. He, therefore, submits that the entire action of the respondents in rejecting the claim of the petitioner for absorption successively on different grounds is wholly, unsustainable in law and in the face of the experience certificate, which has ultimately found acceptance with the respondents, the petitioner is entitled to be absorbed against appropriate post.

Sri V.S.K. Ramarao, learned counsel representing learned Standing Counsel for the respondents, submitted that though the circular provides for absorption of even clerical staff they are being absorbed only as conductors. He also stated that the scheme of

absorption envisaged in circular No.PD/22/75-76 dated 23.5.1975 is no longer in operation as the same was discontinued in the year 1998. He, therefore, submits that the petitioner is not entitled to any relief. He further submitted that already five persons, who worked in the displaced bus, in question, were absorbed and, therefore, the petitioner is not entitled to get absorbed.

From the narration of the facts given above, it is clear that the case has chequered history. On the earlier occasions, the petitioner's claim for absorption was rejected on the ground that the certificate dated 04.02.1992 issued by the Labour Officer was not genuine as it contains certain corrections.

Writ petition No.2058/1993 filed against the order dated 27.06.1992 of respondent No.3 in refusing to absorb the petitioner on the ground that he did not possess proper experience certificate was disposed of by this Court directing the respondents to consider the case of the petitioner afresh in the light of the letter dated 04.02.1992 issued by the Labour Officer, concerning the experience of the petitioner as an employee in the displaced bus. As his claim was once again rejected on 08.2.1995, the petitioner filed W.P.No.3059 of 1997 on the self same ground that the dates mentioned in the letter dated 4.2.1992 are incorrect. The said rejection was set aside by this Court in the said writ petition, which was disposed of on 18.02.1997 and it is appropriate to extract the relevant portion of the said order, which reads as under:-

> "In pursuance of the said directions of this Court, the matter was again considered by the Regional Manager, APSRTC, Nizamabad and it was rejected on the ground that the dates mentioned by the Labour Officer are not genuine and that they are intentionally brought into records only with a view to get employment and on this ground his case was rejected.

> I am afraid the said ground cannot be sustained, inasmuch as the Labour Officer himself has accepted that there was a clerical error in writing the date of the engagement of the petitioner and that was clearly stated in the letter dated 4.2.1992 and therefore, the rejection of the application on the grounds that the dates mentioned in the letter dated 4.2.1992 are not correct is absolutely illegal and untenable. Accordingly, the impugned proceedings dated 8.2.1995 are quashed. The respondents are directed to consider the case of the petitioner for absorption in the post of Conductor in accordance with the circulars issued by the Corporation and also by taking into consideration the dates of engagement as mentioned by the Labour Officer, Nizamabad in his letter dated 4.2.1992. This exercise shall be completed within a period of two months from the date of receipt of this order.
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> The Writ Petition is disposed of with the above directions at the admission stage."

Now for the third time, the petitioner's claim was rejected on a totally different ground, namely, that the petitioner had worked as a clerk and not as a conductor. Having carefully considered the entire facts of the case, I am of the view that the respondents have taken a specious stand that the petitioner had worked only as a clerk and not as a conductor. It is not in dispute that the circular dated 23.05.1975, under which, the scheme of absorption is formulated provides for the absorption of not only conductors, drivers and checkers of displaced buses, but also the clerical staff. If the corporation have found it convenient to absorb even clerical staff against the post of conductors, that does not deprive the displaced clerical staff of their right to make a claim for absorption against an appropriate post. That the ground of rejection in the impugned order was raised for the first time by the

respondents without raising it in the earlier rejection orders itself shows that they have invented this ground in order to deny the employment to the petitioner, who has been made to litigate from 1993 onwards. Since the respondents have not reiterated earlier ground that the petitioner had not filed proper proof of his experience, it can be legitimately presumed that they are not disputing the experience of the petitioner and the ground of rejection being contrary to the circular of the Corporation cannot be sustained.

For the abovementioned reasons, the respondents shall reconsider the case of the petitioner treating his claim of experience as valid claim and he is entitled to absorption even if he worked as a clerk and not as a conductor. The respondents are directed to complete this exercise within a period of one month from the date of receipt of a copy of this order.

With the above observations, the writ petition is disposed of. No order as to costs.

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C.V.NAGARJUNA REDDY,J.

Dated:21.06.2007
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THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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